

041120/01245/TPD

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS, EAST ST. LOUIS DIVISION

RONALD BARROW, #N52087,

Plaintiff,

v.

WEXFORD HEALTH SOURCES, INC., DR.
ERIC JOHNSON, DR. CHRISTINE
LOCHHEAD, DR. ROBERT SHEARING,
GAIL WALLS, DR. BAKER, WARDEN OF
MENARD, and KIMBERLY BUTLER,

Defendants.

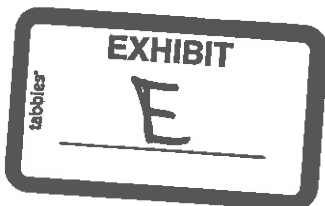
Case Number 3:14-cv-941-NJR-DGW

Judge Judge Nancy J. Rosenstengel
Magistrate Judge Donald G. Wilkerson

AFFIDAVIT OF ROBERT SHEARING, M.D.

NOW COMES Robert Shearing, M.D., being duly sworn and states as follows:

1. My name is Robert Shearing, M.D. I am of sound mind, over the age of 21 years, and capable of making this affidavit.
2. I am a 1988 graduate of the University Of Southern California School Of Medicine.
3. I completed one year of internship at Scripps Hospital in San Diego, California, one year of General Surgery Internship at Christus St. Joseph Hospital in Houston, Texas, and five years of neurosurgical training in San Antonio, and at Saint Louis University.
4. I was employed by Wexford Health Sources, Inc. as the Medical Director at Menard Correctional Center (Menard) from October 15, 2012 through November 16, 2013.
5. I have reviewed Mr. Barrow's Menard medical records from January 10, 2012 through November 16, 2013. They were provided to me by my attorneys. They are the type of records upon which I regularly relied on at Menard in making medical decisions.
6. Prior to my arrival at Menard, Mr. Barrow's medical records document the following



ophthalmologic conditions and procedure.

- Mr. Barrow was evaluated by an onsite optometrist on January 10, 2012. There was no indication that he had any loss of vision on that date.
- Mr. Barrow was seen by an optometrist for complaints of a loss of vision in his right eye, and referred to Marion Eye Center to be evaluated for a retinal detachment. He was approved in Collegial Review for the evaluation and for repair of the retinal detachment, and underwent a par plana vitrectomy at Marion Eye Center on February 27, 2012.
- On August 1, 2012, during an appointment to evaluate scar tissue over the macula of his right eye, a left eye retinal tear was found. Approval for repair of this condition was granted by Wexford, and the tear was repaired at Marion Eye Center.

7. On October 31, 2012, after Mr. Barrow returned from an appointment with an outside ophthalmologist, a recommendation for a referral for a right eye membrane peel and cataract extraction was made by the onsite optometrist.

8. I presented that request (as both the October 31, 2012 request for referral and as an appeal to a denial of a request for referral for cataract extraction from April 18, 2012) in Collegial with Dr. Baker. After discussing Mr. Barrow's current state of health, the relatively recent previous procedures, his current left eye best corrected visual acuity of 20/20, and his ability to manage his activities of daily living within the prison environment, Dr. Baker determined that the cataract extraction would not be approved at that time, however Mr. Barrow would be monitored by optometry at Menard and represented to Collegial in six months.

9. During my tenure at Menard Mr. Barrow's vision was closely monitored, and his

left eye best corrected visual acuity remained stable. His best corrected visual acuity in his left eye was 20/30 on March 8, 2013; 20/30-2 (meaning he missed two letters) on June 20, 2013; 20/30 on July 2, 2013; and 20/25 on September 4, 2013.

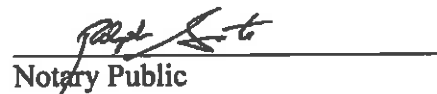
10. Based upon Mr. Barrow's stable best corrected visual acuity in his left eye, and no problems managing his activities of daily living at Menard, no further recommendations for referrals to an outside ophthalmologist were made during my tenure at Menard.

Further affiant sayeth not.

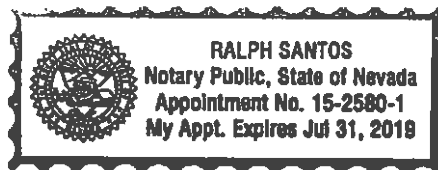

Robert Shearing, M.D.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Subscribed and sworn to before me this 21 day of NOVEMBER, ²⁰¹⁶~~2015~~.


Notary Public

My commission expires: July 31, 2019



8397924 CTOLBERT;CTOLBERT

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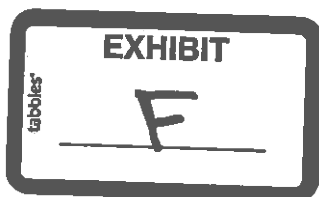
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Judge Judge Nancy J. Rosenstengel
Magistrate Judge Donald G. Wilkerson

AFFIDAVIT OF MARK BAKER, D.O.

COMES NOW, Mark Baker, D.O., being duly sworn, and states as follows:

1. I am a graduate of the Philadelphia College of Osteopathic Medicine. I am licensed by the Pennsylvania Board of Osteopathic Medicine, and have been board certified by the American Osteopathic Board of Family Physicians since 1994.
2. I was employed by Wexford Health Sources, Inc. from August 29, 2011 through July 3, 2013 as Strategic Clinical Initiatives Director.
3. I have practiced as a Family Medicine Physician in a medical school affiliated private practice, and teach part-time at the Lake Erie College of Osteopathic Medicine in Erie, Pennsylvania, since August 2013.
4. In my role as Strategic Clinical Initiatives Director I conducted Wexford's Utilization Management process meetings, termed "Collegial Review," via telephone with onsite correctional facility Medical Directors.
5. During my employment with Wexford, I conducted Collegial Reviews to discuss



referrals for medical care that cannot be obtained at the correctional facilities. Decisions regarding when inmates should be seen by outside physicians were made in consultation with the facility site director.

6. Collegial Reviews were held weekly for routine requests for referrals, however requests for urgent care could be made at any time. Approval was not required prior to sending an inmate for emergency care.

7. Factors that were considered during the Collegial Review process are the inmate patient's medical history, current condition, relevant standards of care, and Wexford Health Sources, Inc. Policies. Cost of the requested care was not considered.

8. I have reviewed Mr. Barrow's requests for referral for ophthalmologic care, Utilization Management forms, Utilization Management file, and medical records documenting optometry assessments and ophthalmologic care from January 1, 2012 through July 3, 2013. They were provided to me by my attorneys.

9. A Utilization Management form dated February 24, 2012 indicates that Mr. Barrow was approved in Collegial for an urgent ophthalmologic examination to be evaluated for a retinal detachment. The approval form does not contain my name, and I do not recall if I was involved in approving Mr. Barrow for that examination.

10. A Utilization Management form dated February 27, 2012 indicates that Mr. Barrow was approved in Collegial for an urgent repair of a detached retina in his right eye. The approval form does not contain my name, and I do not recall if I was involved in approving Mr. Barrow for the procedure.

11. A Utilization Management form dated April 18, 2012 indicates that a request that Mr. Barrow be seen by an outside ophthalmologist to be evaluated for a right eye cataract that

developed subsequent to the laser repair of the right eye retinal detachment was presented in Collegial Review. The onsite Medical Director, Dr. Shepherd, and I discussed Mr. Barrow's current best corrected visual acuity of 20/400 in his right eye, and 20/25 in his left eye, and his ability to carry out his activities of daily living within the prison environment. Based upon his near normal visual acuity in his left eye, and his ability to safely perform his activities of daily living, Dr. Shepherd and I determined that he could be managed conservatively onsite, but would be represented for collegial review if needed.

12. A Utilization Management form dated June 27, 2012 indicates that a request that Mr. Barrow be seen by an outside ophthalmologist to be evaluated for a right eye cataract that developed subsequent to the laser repair of right eye retinal detachment and scar tissue over the macula of his right eye was presented in Collegial Review. Mr. Barrow did not meet the criteria for cataract extraction; however Dr. Shepherd and I determined that he should be seen by a retinal specialist regarding the scar tissue.

13. A Utilization Management form dated August 13, 2012 indicates that a request that Mr. Barrow undergo a par plana vitrectomy due to the right eye scar tissue, as had been recommended by the retinal specialist, was presented in Collegial Review. After discussion with Dr. Shah (another Wexford physician), I determined that Mr. Barrow should undergo that procedure.

14. A Utilization Management form dated November 6, 2012 indicates that an appeal of the denial of the April 18, 2012 request that Mr. Barrow be referred to be seen by an outside ophthalmologist to be evaluated for a right eye cataract that developed subsequent to the laser repair of the right eye retinal detachment was presented in Collegial Review. The onsite Medical Director, Dr. Shearing, and I discussed Mr. Barrow's current best corrected visual acuity of

20/400 in his right eye, and 20/20 in his left eye, and his abilities to carry out his activities of daily living within the prison environment. Based upon his normal best corrected visual acuity in his left eye, and his ability to safely perform his activities of daily living, Dr. Shearing and I determined that he could be managed conservatively onsite, but would be represented for collegial review in six months if needed.

15. Wexford Health Sources, Inc. policy for the management of cataracts, based on current best medical evidence, allows for approval of cataract surgery if the inmates best corrected visual acuity is 20/60 or worse in the dominant eye, or if the cataract causes inflammation, angle closure, or medically unmanageable open angle glaucoma. None of those conditions were present in Mr. Barrow's case on April 18, 2012. In discussion with the onsite medical director, it was determined that Mr. Barrow was able to satisfactorily able to carry out his activities of daily living within the correctional facility and, therefore, did not meet the criteria for extraction at that time.

16. As the development of cataracts is dynamic, and Mr. Barrow's vision may continue to change, I recommended that Mr. Barrow's condition be represented for Collegial Review if needed.

17. I received no other requests for referral for ophthalmologic care for Mr. Barrow, and had no further involvement in his care and treatment.

18. I had no involvement in scheduling off-site medical appointments.

Further affiant sayeth not.


Mark Baker, D.O.

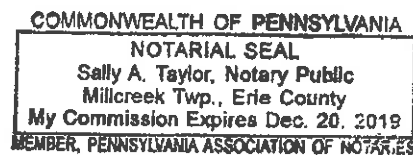
STATE OF PENNSYLVANIA)

COUNTY OF ~~ALLEGHENY~~) ss.
ERIE)

SUBSCRIBED and SWORN to before me, a Notary Public, this 28th day of
November, 2016.

Sally Taylor
Notary Public

My Commission Expires: 12/20/2019



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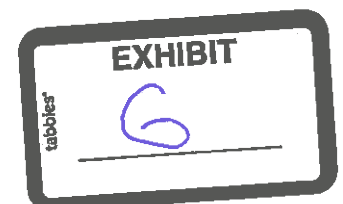
Case Number 3:14-cv-941-NJR-DGW

Judge Nancy J. Rosenstengel Magistrate
Judge Donald G. Wilkerson

AFFIDAVIT OF JOE EBBITT

COMES NOW Joe Ebbitt, being duly sworn, and states as follows:

1. My name is Joe Ebbitt. I am over the age of 21 years, of sound mind and capable of making this affidavit. Everything within this affidavit is personally known to me.
2. I am the Director of Risk Management, HIPAA Compliance, and Legal Affairs for Wexford Health Sources, Inc. ("Wexford").
3. Pursuant to contract, Wexford provides a variety of written Policies and Procedures that are utilized by physicians employed by Wexford as guidelines in treating inmates within the Illinois Department of Corrections, including Menard Correctional Center. Wexford Policies and Procedures are superseded by Illinois Department of Corrections' Administrative and Institutional Directives.
4. I am generally familiar with the written Policies and Procedures utilized by physicians employed by Wexford as guidelines in treating inmates within the Illinois Department of Corrections.



5. These Policies and Procedures serve as a reference tool for physicians to assist them in caring for patients within the Illinois Department of Corrections.

6. The Policies and Procedures are not intended to replace physicians' clinical judgment, nor do they strictly apply to all patients. Application of any Policy and Procedure is a decision made by the physician after taking the individual patient's clinical presentation into consideration. Policies and Procedures do not exist for every potential diagnosis a physician may encounter in a patient.


7. It is Wexford's policy that physicians should order the treatment and/or medication that they believe is medically necessary for an inmate after assessing the inmate's medical and physical condition. When determining which treatment and/or medication is medically necessary, the physicians are advised to use their best medical judgment, relying on their knowledge, skills, experience, and training.

8. Wexford has a policy on the management of cataracts that serves as a guide to onsite treating physicians, as well as Utilization Management physicians responsible for approving requests for referrals for treatment from outside physicians. The policy was developed and issued by the Medical Advisory Committee of Wexford Health Sources, a committee composed of clinicians who utilize the most recent professional standards, evidence-based studies, and accepted practices.

9. Wexford has no policy, protocol, or practice, either written or unwritten titled "One good eye."

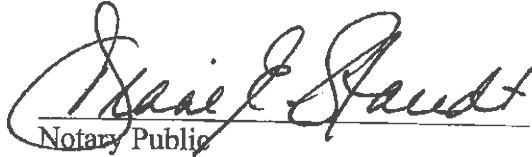
10. Wexford has no policy, protocol, or practice, either written or unwritten, that medical providers are to put money at the forefront of medical decisions. There is no such thing as a "cost over care policy."

Further affiant sayeth not.

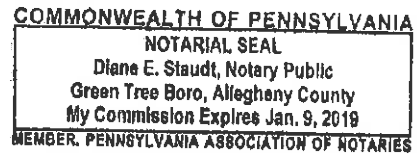

Joe Ebbitt

STATE OF PENNSYLVANIA)
COUNTY OF ALLEGHENY) ss.

SUBSCRIBED and SWORN to before me, a Notary Public, this 2nd day of
December, 2016.


Notary Public

My Commission Expires January 9, 2019



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